

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 29th DAY OF APRIL, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (J)

OA/310/01508/2017

OA/310/01509/2017

OA/310/01510/2017

E. Sivaji Rao, S/o R. Eswara Rao,
R/o No.17, Pillaiyar Koil Street,
First Lane, Triplicane, Chennai 600 005.

...Applicant in OA.1508/2017

-versus-

Union of India rep., by
1. The Special Director General(SR),
Central Public Works Department,
Rajaji Bhawan, Besant Nagar,
Chennai 600 090.

2. The Superintending Engineer (Ele),
Chennai Central Electrical Circle,
Central Public Works Department,
Chennai 600 006.

3. The Executive Engineer (E).
Chennai Central Elect. Division.II,
Central Public Works Department,
Chennai 600 006.

4. The Chief Engineer (SZ)I,
Central Public Works Department,
II Floor, G Wing, Rajaji Bhawan,
Besant Nagar, Chennai 600 090.

...Respondents in OA.1508/2017

Malliga, W/o Late S. Thyagarajan,
R/o 2nd Street, Mangalapuram,
Chennai 600 012.

...Applicant in OA.1509/2017

-versus-

1. The Executive Engineer (E),



1. The Executive Engineer (E),
Chennai Central Elect.Divisionb.II,
Central Public Works Department,
Chennai 600 006.

2. The Chief Engineer (SZ)I,
Central Public Works Department,
II Floor, G Wing, Rajaji Bhawan,
Besant Nagar, Chennai 600 090. .

..Respondents in OA.1509/2017

N. Ramu,
R/o 15/2, Madurai Street,
Astabujam Road, Choolai,
Chennai 600 112.

...Applicant in OA.1510/2017

-versus-

Union of India rep., by

1. The Special Director General(SR),
Central Public Works Department,
Rajaji Bhawan, Besant Nagar,
Chennai 600 090.

2. The Executive Engineer (E).
Chennai Central Elect. Division.II,
Central Public Works Department,
Chennai 600 006.

4. The Chief Engineer (SZ)I,
Central Public Works Department,
II Floor, G Wing, Rajaji Bhawan,
Besant Nagar, Chennai 600 090.

...Respondents in OA.1510/2017

By Advocates:

M/s Ramaswamyrajarajan, for the applicants in all OAs.

Mr. J. Vasu, for the respondents in OAs.1508 & 1509/2017.

Mr. M. Kishore Kumar, for the respondents in OA.1510/2017.



ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

As a common question of law has arisen in all the above three OAs and the reliefs prayed for are also same, the same are being decided by a common order.

2. The applicants have filed these OAs under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"1. To set aside the impugned order No.F.No.7/1/2017-Admn.1/1325(H), dated 25.04.2017, passed by the 3rd respondent,

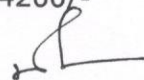
2. To direct the respondents to pay interest at the rate of 18% per annum on (1) the delayed payment of different of DCRG amount (2) Difference of Leave encashment amount, (3) Difference amount of commutation value of pension from the date of his retirement till the date of respective payments and (4) withheld amount of Pay and Allowances and (5) difference of pension arrears from the date of order passed by the 3rd respondent i.e., 25.09.2014, granting ACP benefits to the applicants to till the date of respective payments..."

3. Shri E. Sivaji Rao, Late S. Thiyagarajan and Shri N. Ramu were initially appointed as Group 'D' in the CPWD and after coming out successful in the Limited Departmental Competetive Examination were appointed as LDC and subsequently promoted as UDC. The Department initially granted financial upgradation under the ACP Scheme to the above employees but lateron cancelled the said ACP benefits treating the appointment to the cadre of LDC as promotion. Being aggrieved, the applicants filed OA.185/2009 before this Tribunal wherein this Tribunal by order dated 30.4.2010 had set aside the impugned order dated 21.01.2008 passed by the sixth respondent and directed the respondents to grant first and second financial upgradation to the applicants on completion of 12 years and 24 years of service from the date



they have joined service on regular basis in the Group 'C' post. The respondents were also directed to refund the amount already recovered from the applicants. During pendency of the OA, the applicant in OA.1508/2017 retired from service and other applicants retired within few days of the order. The department without regard to the order of this Tribunal withheld some of the retirement benefits towards recovery of benefit given under the ACP Scheme. Being aggrieved by the action of the respondents, the applicants filed W.P.19643/2013 before the Hon'ble High Court of Madras wherein the matter was remitted back to the Department for considering the issue afresh. In pursuance of the above said order, the respondents considered the issue again and granted the ACP benefits by treating the applicants as Direct Recruits on the analogy of the case of Shri Ramgopal, UDC (Retd), who was granted III MACP. But the interest was not paid to the applicants on the delayed payment of withheld amount of retirement benefits and arrears of pension stating that there is no direction from this Tribunal particularly in that regard. Hence these OAs seeking the above reliefs.

4. Per contra, the respondents have filed a detailed reply statement stating that the employees initially joined service as Group 'D' and were subsequently appointed as LDC under Direct Recruitment quota after passing the departmental examination. They were promoted as UDC and were granted 1st ACP in the pay scale of Rs.4000-100-6000 and the 2nd ACP in the pay scale of Rs.5000-150-8000. The employees had retired from service on attaining the age of superannuation. At the time of retirement, the Pay and Accounts Office, CPWD (SZ), Chennai objected to the grant of 2nd ACP in the grade of Rs.4200/-



stating that the employees had already enjoyed two promotions from Group 'D' to LDC and LDC to UDC and accordingly settled his pension after reducing the Grade pay from Rs.4200/- to Rs.2400/-. The 2nd financial upgradation was revoked by the respondents on the basis of clarification contained in SI.No.8 of the Annexure to DOP&T OM dated 10.2.2000. As per the said clarification, appointment of Group 'D' employees as LDC on the basis of departmental examination shall be counted as promotion for the purpose of ACP since the relevant Recruitment Rule also prescribes for a promotion quota to be filled up on the basis of departmental examination. Aggrieved by the withdrawal of the second ACP, the applicants filed OA.185/2009 and this Tribunal disposed of the said OA by order dated 30.4.2010 setting aside the impugned order dated 21.1.2008 passed by the 6th respondent and directing the respondents to grant first and second financial upgradation to the applicants on completion of 12 years and 24 years of service from the date they have joined service on regular basis in the Group 'C' post. The respondents were also directed to refund the amount already recovered from the employees. The respondents preferred an appeal in W.P.No.19643/2011 before the Hon'ble High Court of Madras wherein the Hon'ble High Court by order dated 7.3.2014 remitted the issue to the Senior Accounts Office, O/o the Pay & Accounts Office, Southern Zone, CPWD, Chennai for fresh consideration without going into the merits of the claim of either of the parties with an observation that if the 2nd ACP is to be recalled, the Senior Accounts Officer shall issue fresh notice, call for the objections and thereafter pass fresh orders after considering the objections. Subsequently the Chief Engineer, Southern Zone-I, CPWD, Chennai vide letter



dated 25.09.2014 revoked the earlier order withdrawing 2nd ACP to the employees and restored the 2nd ACP financial benefits treating them as direct recruits on the analogy of the case of Sri Ramagopal, UDC. Pursuant to the above, all pay and allowances were settled to the employees. Thereafter, the employees had submitted representations on different dates seeking interest on the belated payment of the withheld amount which was rejected by the respondents vide impugned order dated 8.6.2017, 13.7.2017 and 25.4.2017 respectively,

5. The learned counsel for the applicants would submit that after retirement of the employees from service, the respondents have withheld the retiral benefits of the applicants. The extent of delayed payment under various heads is as follows:-

Shri E. Sivaji Rao

**Arrears of Pay and Allowances of Rs.1,34,268/-,
Difference of Leave Encashment amount of Rs.29,590/-,
Difference of DCRG amount of Rs.48,824/-,
Difference of commutation value of pension amount of Rs.45,821/-
Pension Arrears amount of Rs.95,136/-**

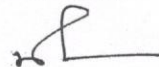
Late S. Thyagarajan

**Arrears of Pay and Allowances of Rs.64,573/-
Difference of Commutation amount of Rs.49,164/-
Difference of DCRG amount of Rs.46,200/-
Difference of Leave Encashment amount of Rs.28,306/-**

Shri N. Ramu

**Arrears of Pay and Allowances of Rs.16,572/-
Difference of Leave Encashment amount of Rs.46,021/-
Amount withheld from Gratuity of Rs.1,44,012/-
Difference of commutation value of pension amount of Rs.52,311/-
Difference amount of retirement Gratuity of Rs.59,250/-**

The respondents ought to have paid the differential amount of retirement benefits and refixed the pension immediately on getting the order of this



Tribunal dated 30.4.2010. Instead the respondents have approached the Hon'ble High Court of Madras by filing W.P.19643/2011 and thereafter paid the amount withheld during February 2015 and pensionary arrears in August 2015 only. Hence there is considerable delay on the part of the respondents in payment of retirement benefits along with arrears of pension and ACP benefits. But the respondents have failed to extend the benefit of interest on the delayed payment of arrears of pension as had been extended to Ramagopal who is also similarly placed like that of the applicants in the present OA.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. Admittedly this the second round of litigation before this Tribunal. Earlier, the applicant had filed OA.185/2009 before this Tribunal wherein this Tribunal by order dated 30.4.2010 set aside the impugned order dated 21.1.2009 passed by the sixth respondent and directed the respondents to grant first and second financial upgradation to the applicant on completion of 12 and 24 years respectively from the date they have joined service on regular basis in the Group 'C' post. The respondents were also directed to refund the amount already recovered from them. As against the above order of this Tribunal, the respondents filed W.P.19643/2011 wherein by order dated 7.3.2014, the Hon'ble High Court remitted the matter to the Department for fresh consideration of the issue. In pursuance of the above order, the fourth respondent passed order granting the ACP benefits to the applicants on the analogy of the case of Shri Ramgopal and subsequently settled the withheld amount of retirement benefits during the month of February 2015 and the



amount of pensionary arrears in August 2015 thereby causing delay in settlement. The applicants are now seeking interest for delayed payment of settlement benefits.

8. The learned counsel for the applicants would contend that when the claim of the applicants have been considered in the light of the order in Ramgopal's case, the interest on the delayed payment of settlement benefits should not be denied to the m.

9. Facts are not in dispute and delay in payment is also an admitted fact. The reason for delay may be for justifiable reasons. But the fact remains that there has been delay and till the date of payment of the amount, the money has been kept by the respondents which ultimately was to be released to the applicants and to that extent of delay, the applicants were deprived of the said money which even if deposited on the date they accrued and became payable after retirement, would have generated interest. Precedents have been cited by the counsel for applicant in respect of entitlement to interest on delayed payment.

10. The law on the subject matter of interest on delayed payment has been crystallised by the Hon'ble Apex Court in the case of Union of India vs. Justice . S.S. Sandhawalia (1994) 2 SCC 240 wherein as a Judgement in rem the Court has observed as follows:-

"Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance or the death-cum-retirement gratuity which was delayed by almost a year."



11. In *Bal Kishore Mody vs. Arun Kumar Singh* (2001) 10 SCC 174, the Apex Court has stated as under:

"4. At the time of the hearing of the matter, considering the delay in making payment of retiral benefits, learned counsel appearing on behalf of the respondent State submitted that this Court may pass appropriate orders giving direction to pay interest on the said amount and the State Government would pay the same within one month from the date of the order. He further submitted that appropriate action would be taken against the officer(s) concerned who delayed the payment of retiral benefits. In this view of the matter, we do not propose to take any further action in these contempt proceedings."

12. In *Vijay L. Mehrotra Vs. State of U.P. and ors.* the Judgenmet of the Hon'ble Apex Court reads as follows:-

"1. Special leave granted, limited to the question of granting of interest.

2. The appellant retired from service on 31-8-1997. From the response filed by the respondent, it is clear that most of the payments of the retiral benefits to her were made a long after she retired on 31-8-1997. The details of the payments so made are as under:

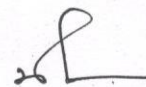
| Sl.No. | Particulars | Amount | paid Date |
|--------|---------------------|----------------|------------|
| (i) | GPF 90% | Rs 1,80,899.00 | 27-11-1997 |
| (ii) | GPF 10% | Rs 20,751.00 | 25-04-1998 |
| (iii) | GIS | Rs 13,379.00 | 27-02-1998 |
| (iv) | Encashment of leave | Rs. 41,358.00 | 27-09-1998 |
| (v) | Arrears of pay | Rs 15,495.00 | 27-09-1998 |
| (vi) | Gratuity | Rs 1,09,753.00 | 05-12-1998 |
| (vii) | Commuted pension | Rs 20,484.00 | 05-12-1998 |
| (viii) | Detained amount | Rs 45,000.00 | 05-11-1999 |

3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retrial benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement."

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e., 31-8-1997 till the date of payments.

5. The appeal is allowed to the above extent.

13. In the conspectus of the above facts and circumstances of the case and the Judgements of the Hon'ble Supreme Court referred to (supra), the applicants are entitled to interest on the delayed payment of retirement



benefits. As the present rate of interest on fixed deposits in the national banks ranges from 7% to 8%, it would be appropriate to fix the rate of interest at 7.5% for the period of delay in payment from the dates of retirement till the date of payment as discounted by two months which would even in normal circumstances would occasion. The respondents accordingly are directed to work out interest on delayed payment at the rate of 7.5% per annum for items No.1,2 & 3 as set out in the relief (supra). For items 4 & 5, interest at the rate of 7.5% per annum may be paid from date of order passed by the fourth respondent ie., 25.9.2014 as prayed for. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

14. The OAs are disposed of as above. No costs.